92-1198

Supreme Court, U.S.
FILED
DEC 31 1992
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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

WILLIAM ELLIS MATYASTIK,

Petitioner

v.

THE STATE OF TEXAS,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE
COUNTY COURT AT LAW NO. 2
MCLENNAN COUNTY, TEXAS

PETITION FOR WRIT OF CERTIORARI

William Ellis Matyastik
PETITIONER
2115 Washington Avenue
Waco, Texas 76701
(817) 756-1421

24 pp

QUESTIONS PRESENTED

1. Is it a denial of due process of law to afford every other citizen a 10-day notice of an alleged violation of the weed/grass ordinance of the City of Waco but to deny the 10-day notice and opportunity to cure to Petitioner?

2. Is it a denial of due process of law for the City of Waco and the State of Texas to fabricate evidence, suborn witnesses to perjury, and to conspire to deny Petitioner the equal protection of the law?

LIST OF PARTIES

The parties ot the proceedings below were as follows:

Petitioner: William Ellis Matyastik and

Respondent: The State of Texas

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PETITION FOR WRIT OF CERTIORARI TO THE
COUNTY COURT AT LAW NO. 2
MCLENNAN COUNTY, TEXAS

The petitioner William Ellis Matyastik respectfully prays that a writ of certiorari issue to review the judgment and opinion of the County Court at Law No. 2, McLennan County, Texas, entered in the above-entitled proceeding on October 17, 1991.

OPINIONS BELOW

The opinions of the Courts below were not printed.

They are reprinted in the appendix hereto, p. 1 a, *infra*.

JURISDICTION

The jurisdiction of this Court to review the judgment of the County Court at Law No. 2, McLennan County, Texas, is invoked under 28 U.S.C. Sec. 1257(3).

STATEMENT OF THE CASE

This case arose out of an alleged violation of the City Ordinance of the City of Waco, Sec. 17-65(a)(1). This is an appeal by Petitioner, William Ellis Matyastik, from a conviction of the offense of allowing weeds and grass to grow to a height exceeding 12 inches.

Petitioner was tried on a plea of not guilty to a jury on September 17, 1991, and was found guilty. The jury assessed a fine of $100.00. Petitioner has been denied an appeal due to the small amount of the fine.

On June 10, 1992, the Tenth Court of Appeals for the State of Texas dismissed Petitioner's appeal because of the small amount of the fine.

On September 30, 1992, the Court of Criminal Appeals for the State of Texas refused Petitioner's Petition for Discretionary Review.

The judgment and sentence were dated on October 17, 1992.

At trial, the State's witness testified that there was a ten day notice that was given to every other person subject to the City Ordinance that gave rise to this prosecution and that every other citizen was given a ten day opportunity to cure the alleged violation of the City ordinance.

However, Petitioner was not afforded the ten day notice and the ten day opportunity to cure the alleged violation of the weed/grass ordinance of the City of Waco. Statement of Facts, page 47, line 16 and 17; page 49, lines 6-11; page 88, lines 17-24, Vol. II.

Petitioner was denied due process of law and the equal protection of the law as provided by the Fourteenth Amendment to the Constitution of the United States.

The failure of the City of Waco to give Petitioner the ten day notice letter and opportunity to cure the alleged violation was raised during the trial of this case. Statement of Facts, Page 47, line 12-16, Vol. II contains the testimony of the City inspector that the notice provision of the City is a ten day notice; Page 49, lines 6-11 contains the testimony of the City inspector that he gave the Petitioner no notice of the alleged violation; Page 88, lines 17-24 contain the testimony of the City inspector that there was no communication with the Petitioner in regard to the alleged violation of grass ordinance by Petitioner

The matter was raised again in the Motion for New Trial. Transcript, Vol. I, pages 62-66; Statement of Facts, Vol, IV, pages 240-244.

REASONS FOR GRANTING THE WRIT

The City Ordinance Sec. 66 of the City of Waco contains a clause that provides that notice is not required for the prosecution of alleged violations of the Waco City Ordinance. Respondent has used this porvision in its City Ordinance to deny to Petitioner the ten day notice and opportunity to cure the violation that the City of Waco provides to every other person who is subject to its City Ordinance.

As the Waco City Ordinance recites that notice is not required prior to prosecution of alleged violations of the City Ordinance, the Respondent has used its own ordinance to deny to Petitioner due process of law and the equal protection of the law that is afforded to every other person who is subject to the Waco City Ordinance, Sec. 17-65(a)(1).

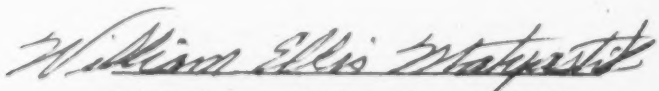
Further, Petitioner has been denied any appellate review of the matter based on the amount of the fine.

The writ should be granted so that Petitioner may be afforded the equal protection of the law and due process of law.

CONCLUSION

For these reasons, this petition for certiorari should be granted.

Respectfully submitted,



William Ellis Matyastik
2115 Washington Avenue
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(817) 756-1421

JUDGMENT

NO. 903936CR2

THE STATE OF TEXAS	X	IN THE COUNTY
VS.	X	COURT AT LAW OF
WILLIAM ELLIS	X	MCLENNAN COUNTY,
MATYASTIK	X	TEXAS

JUDGMENT

On this 17 day of Oct. 1991, the above entitled and numbered cause was called for trial, and the Defendant, and the Defendant's counsel, Jane Vorwerk, and the State's attorney, all being present in open Court, and the Defendant having been duly arraigned in open Court, and having pled not guilty to the charges contained in the Complaint filed herein, both parties announced ready for trial; thereupon a jury of good and lawful persons, to-wit: Rex B. Rogers, Jr. and five others, was duly selected, impaneled and sworn, who, having heard the Complaint read, and the

Defendant's plea of not guilty thereto, and having heard the evidence submitted, and having been duly charged by the Court, and having heard the argument of counsel, retired in charge of the proper officer to consider of their verdict, and afterward, to-wit: on the 18th day of September, 1991, said jury was brought into open Court by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open Court the following verdict, which was received by the Court and is here and now entered upon the minutes of the Court, to-wit:

"We, the jury, find the Defendant guilty as charged in the complaint and assess his punishment at a fine of $100.00. /s/ Rex B. Rogers, Jr., Presiding Juror"

It is, therefore, CONSIDERED, ORDERED AND ADJUDGED BY THE Court that the Defendant is adjudged to be guilty of the offense of violation of weed/grass

ordinance, as found by the jury and that his punishment has been set at a fine of $100.00, and that the State of Texas do have and recover of said Defendant all costs of this prosecution, for which let execution issue, and the said Defendant is remanded to the custody of the Sheriff who will commit him forthwith to jail to await the further orders of the Court herein.

/s/ Michael Gassaway

Judge

SENTENCE

NO. 903936CR2

THE STATE OF TEXAS	X	IN THE COUNTY
VS.	X	COURT AT LAW OF
WILLIAM ELLIS	X	MCLENNAN COUNTY,
MATYASTIK	X	TEXAS

S E N T E N C E

On this the 17th day of October, 1991, the above entitled and numbered cause was again called for the purpose of having the sentence of law pronounced therein in accordance with the judgment therein rendered on the 18th day of September, 1991, and Defendant and Defendant's counsel (Defendant having knowingly, intellingently and voluntarily waived his right to counsel, and the Court having so found) and the State's attorney, all being present in open court, the Defendant was asked by the Court whether he had anything to say why sentence should not be pronounced in this cause, and the

Defendant answered nothing in legal bar thereon;

WHEREUPON, the Court proceeded, in the presence of the Defendant, to pronounce sentence in this cause as follows:

It is the ORDER of this Court that said Defendant, who has been adjudged in this cause to be guilty of the offense of violation of City grass/weed ordinance and whose punishment therefor has been assessed in said judgment a fine of $100.00, together with all costs in this cause incurred, be committed to the Sheriff of McLennan County, Texas, to be confined in jail until all such costs and fines are paid, and said term of imprisonment has expired, in accordance with the provisions of, and in the manner prescribed by the laws of the State of Texas. It is further ORDERED that execution issue against the property of said Defendant for the amount

of said fine and costs.

/s/ Michael Gassaway

J U D G E

IN THE

TENTH COURT OF APPEALS

No. 10-92-006-CR

WILLIAM ELLIS MATYASTIK,

Appellant

v.

THE STATE OF TEXAS,

Appellee

From the County Court at Law No. 2

McLennan County, Texas

Trial Court # 903936 CR2

O P I N I O N

William Ellis Matyastik was convicted by the municipal court of the city of Waco of violating a city ordinance. On appeal to the County Court at Law, he was convicted by a jury. The jury's verdict, the judgment, and the sentence uniformly

assessed Matyastik a fine of $100. He appeals on seven points, including six complaining of the court's denial of his motion for a new trial and one alleging that the evidence was insufficient to sustain the conviction. The State has filed a motion to dismiss the appeal for want of jurisdiction.

Article 4.03 of the Code of Criminal Procedure states:

The Courts of Appeals shall have appellate jurisdiction coextensive with the limits of their respective districts in all criminal cases except those in which the death penalty has been assessed. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court, the county criminal court, or county court at law, in which the fine imposed by the county court, the county criminal court or county court at

law does not exceed one hundred dollars, unless the sole issue is the constitutionality of the statute or ordinance on which the conviction is based.

TEX. CODE CRIM. PROC. ANN. art 4.03 (Vernon Supp. 1992).

Review by this court is not available. The fine assessed by the court did not exceed $100, and Matyastik does not assert that the ordinance on which his conviction is based is unconstitutional. Thus, we have no jurisdiction. See id.; Lopez v. State, 649 S. W. 2d 165, 166 (Tex. App.-- El Paso 1983, no pet.).

The State's motion to dismiss the appeal for want of jurisdiction is granted, and the appeal is dismissed.

BILL VANCE

Justice

Before Chief Justice Thomas,
Justice Cummings, and
Justice Vance

THE STATE OF TEXAS

TENTH COURT OF APPEALS

CHIEF JUSTICE

Bob L. Thomas

CLERK

Bob Watts

JUSTICES

Bob Cummings

Bill Vance

June 10, 1992

In accordance with the enclosed Opinion, below is the judgment in the numbered cause set out herein to be entered in the Minutes of this Court as of the 10th day of June, 1992.

10-92-006-CR WILLIAM ELLIS MATYASTIK v. THE STATE OF TEXAS - ON APPEAL FROM COUNTY COURT AT LAW NO. 2 OF MCLENNAN COUNTY - DISMISSED - Opinion by Justice Vance:

"This cause came on to be heard on the State's motion to dismiss the appeal, and the same being considered, because it

is the opinion of this Court that the motion should be granted; it is therefore ordered, adjudged and decreed that the motion be, and hereby is, granted. It is further ordered, adjudged and decreed that the appeal be, and hereby is dismissed for want of jurisdiction in accordance with the opinion of this Court, and that the appellant pay all costs in this behalf expended, and that this decision be certified below for observance."

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WACO, TEXAS 76703-1606

OFFICIAL NOTICE THE STATE OF TEXAS

COURT OF CRIMINAL APPEALS

September 28, 1992

COA#: 10-92-00006-CR

RE: Case No. 1187-92

STYLE: MATYASTIK, WILLIAM ELLIS

On this day, the Appellant's Petition for Discretionary Review has been REFUSED.

Thomas Lowe, Clerk

COURT OF CRIMINAL APPEALS

P. O. BOX 12308, CAPITAL STATION

AUSTIN, TEXAS 78711